IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

SECOND APPEAL NO.677 OF 2005
WITH
CIVIL APPLICATION NO.1151 OF 2005

Anandrao Baburao Yadav & Ors. ...Appellants.
Vs.
Vasant Dadu Koli & Ors. ...Respondents.

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Mr. R.V. More for the Appellants.
Mr. P.V. Badadare for Respondent No.1.

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CORAM : DR. D.Y. CHANDRACHUD, J.

December 9, 2005.

P.C.:

The First Appellate Court by a judgment and order dated 7th April 2005 set aside the judgment of the Trial Court dismissing the suit for specific performance. As a result of the judgment of the First Appellate Court, the suit for specific performance stands decreed.

2. There was an agreement between the First Respondent (the Plaintiff) and the Second Respondent (the First Defendant) for the sale of the suit property on 13th February 1990 at and for a consideration of Rs.48,000/-. The agreement to sell, though it is

not necessary to do so, was registered on 14th February 1990. Subsequently, there was a Deed of Extension. The Plaintiff issued a notice calling upon the First Defendant to perform the contract on 19th December 1990 and eventually when the agreement was not performed, instituted a suit for specific performance in 1991. The Appellants before the Court purchased the property pendente lite after the suit was instituted. In fact, the First Appellate Court has noted that the property was purchased despite an order of injunction. During the pendency of the appeal, the suit was compromised as between the original owner, the First Defendant and the Plaintiff. In these circumstances, the Appellants who purchased the property with eyes wide open during the pendency of the suit, have no subsisting legal right. On behalf of the Appellants it has been submitted that the compromise which was arrived at between the First and Second Respondents during the pendency of the suit, was collusive and consequently the doctrine of lis pendens would not apply. The submission cannot be accepted. It is evident that the suit was contested by the First Defendant who filed a Written Statement. The First Defendant entered the witness box and the suit was in fact, dismissed by the Trial Court. The Deed of Compromise was then concluded during

the pendency of the appeal. Though unquesionably, an appeal is a continuation of the suit that however, would not protect the Appellants. The Appellants initially sought to set up a plea that they were purchasers in an auction sale but, neither did they step into the witness box to establish the case, nor did they produce any material even before this Court to that buttress submission. Fairly, Counsel states that there is nothing on the record to show that they were purchasers in an auction sale. In these circumstances, it is clear that the Appellants purchased a smaller portion of the property approximately admeasuring 8 sq.mtrs. during the pendency of the suit. This transaction is hit by the doctrine of lis pendens.

3. The appeal does not raise any substantial question of law and is dismissed. Counsel appearing on behalf of the First Respondent states that the First Respondent shall not execute the decree for a period of eight weeks.

4. In view of the disposal of the appeal, the Civil Application does not survive and is accordingly disposed of.

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